



WISCONSIN SUPREME COURT

Tuesday, October 7, 2003

9:45 a.m.

02-1416

Julia Cole et al. v. Yvonne L. Hubanks et al.

This is a certification from the Wisconsin Court of Appeals, District I (headquartered in Milwaukee). This means that the Court of Appeals, rather than issuing its own ruling, asked the Wisconsin Supreme Court to take the case directly. The Court of Appeals certifies cases that cannot be decided by applying current Wisconsin law. The Supreme Court is the state's law-developing court while the Court of Appeals is responsible for correcting errors that occur in the trial court. This case originated in the Milwaukee County Circuit Court, Judge William J. Haese presiding.

In this case, the Supreme Court will decide if the rule that prevents firefighters and emergency medical technicians (EMTs) from suing when they are injured in the line of duty should also bar police officers from recovering damages from citizens who place them in harm's way.

Here is the background: Milwaukee Police Officer Julia Cole was on patrol with her partner in January 2001 when she spotted a 90-pound dog dragging a chain behind it as it crossed a city street. She called the dog, and, as it approached her, knelt down and let it sniff her hand. Without warning, it jumped on her, knocked her down, and bit her face, neck, and hand. She required hospitalization and about 30 stitches.

Cole sued the dog's owners, Yvonne and Aubrey Hubanks, and their insurer, American Family Mutual Insurance Company, alleging that the Hubanks were negligent in caring for and restraining their dog. She also alleged that the couple harbored a dangerous animal, failed to confine and muzzle the dog, and failed to warn the public of the dog's dangerous nature.

In the circuit court, the Hubanks and American Family filed a motion for summary judgment, asking the judge to dismiss the case based upon the so-called "firefighter's rule"¹ that prohibits a firefighter who is injured in the line of duty from suing the person who started the fire or allowed it to spread. Three years ago, the Wisconsin Supreme Court extended the rule to EMTs, in a case involving an EMT who was injured while working at an accident scene. Many states around the nation have adopted similar rules, but some, like Oregon, have declined to prohibit these lawsuits. The circuit court agreed with the dog owners and their insurer that Cole could not sue, dismissing the case. Cole went to the Court of Appeals.

The Court of Appeals, as noted, determined that this case raises a question not previously decided in Wisconsin: whether it's good public policy to extend the firefighter's rule to police officers. That court sent the case directly to the Supreme Court.

In her appeal, Cole argues that her case is different from the cases where firefighters and EMTs were barred from suing, because it involves law violations by the

¹ The firefighter's rule was first adopted in Wisconsin in 1970, when the state Supreme Court issued its ruling in Hass v. Chicago & North Western Railway, 48 Wis. 2d 321, 179 N.W.2d 885. It was expanded to include emergency medical technicians in 2000 when the state Supreme Court decided Pinter v. American Family Mutual Ins. Co., 2000 WI 75.

Hubanks (allowing a dangerous animal to run free). She argues that her case is actually more similar to one that the Supreme Court handled in 1977, which involved firefighters injured in a building where the property owner had violated the building code.² In that case, the Supreme Court found that the firefighter *did* have the right to sue. The Supreme Court will decide whether police officers who are injured in the line of duty can sue the people who created the danger.

² Clark v. Corby, 75 Wis. 2d 292, 249 N.W.2d 567